STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM THOMAS,

Plaintiff-Appellant,

v

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
June 27, 1997

No. 191056
Wayne Circuit Court
LC No. 94-423397

Before: White, P.J., and Cavanagh and J. B. Bruff*, JJ.

PER CURIAM.

Following a jury verdict and judgment in plaintiff's favor, the trial court, on plaintiff's motion, awarded plaintiff taxable costs, attorney fees under the no-fault act, MCL 500.3148(1); MSA 24.13148(1), interest under the no-fault act, MCL 500.3142; MSA 34.13142, one dollar in attorney fees under MCR 2.403(O), and pre-judgment interest, MCL 600.6013; MSA 27A.6013. On appeal, plaintiff challenges the trial court's award of one dollar under MCR 2.403(O), its reduction of plaintiff's counsel's hours by one-hundred in awarding attorney fees, and the court's ruling that pre-judgment interest is not calculated on the no-fault interest. We affirm in part, and reverse in part.

I

A

Plaintiff first argues that the trial court abused its discretion by awarding him one dollar in attorney fees under MCR 2.403(O). We agree. We review an award of attorney fees pursuant to MCR 2.403 for an abuse of discretion. *Haberkorn v Chrysler Corp*, 210 Mich App 354, 379; 533 NW2d 373 (1995); *MBPIA v Hackert Furniture*, 194 Mich App 230, 234; 486 NW2d 68 (1992).

MCR 2.403(O) states in pertinent part:

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* Circuit judge, sitting on the Court of Appeals by assignment.

(1) If a party has rejected an evaluation and the action proceeds to trial, that party **must** pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the mediation evaluation. . . .

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(6) For the purpose of this rule, actual costs are

(a) those costs taxable in any civil action, and

(b) a reasonable attorney fee **based on a reasonable hourly or daily rate as determined by the trial judge** for services necessitated by the rejection of the mediation evaluation. [Emphasis added.]

Plaintiff requested $85,900 in attorney fees under the no-fault act (for 429.5 hours) and $68,700 in attorney fees under MCR 2.403(O) (for 343.5 hours), at an hourly rate of $200.00.

At the hearing, the trial court considered defendant's liability for attorney fees under the no-fault act and cogently and compellingly concluded that defendant had unreasonably refused to pay benefits. The court then performed the requisite analysis under *Wood v DAIIE*, 413 Mich 573; 321 NW2d 653 (1982), and subtracted one hundred hours from plaintiff's counsel's figure of 429.5 hours. The court determined that $200.00 was a reasonable hourly rate, and awarded fees for 329.5 hours, or $65,900. Turning to the question of mediation sanctions, the court stated that it was aware that it had discretion to award fees under both the no-fault act and MCR 2.403(O), but awarded one dollar under MCR 2.403(O):

The next issue I would like to deal with is whether Mr. Liss [plaintiff's counsel] is also entitled to attorney fees under mediation sanctions. Of course, the rule says that attorney fees are mandatory, and so I believe to a certain extent I don't have any discretion in terms of awarding attorney fees. I must award some attorney fees. The question is what is reasonable.

And I think it's reasonable to look at the fact that Mr. Liss is operating under a one-third contingent fee, that I have already awarded him reasonable attorney fees under the No Fault Act.

And consequently, in my judgment, what is reasonable is one dollar. And that's what I will award in terms of mediation sanctions in light of the attorney fees that I have already awarded.

I want the record to be clear that, one, I understand that I could award attorney fees under mediation, and in fact, I have done that, but I believe that one dollar is reasonable for the reasons that I have indicated.

B

An award of attorney fees under the no-fault act serves a purpose separate and distinct from that served by awarding fees under the mediation court rule. *Kondratek v Auto Club*, 163 Mich App 634, 638-639; 414 NW2d 903 (1987). The attorney fees awarded under the no-fault act represent a penalty for an insurer's unreasonable refusal or delay in making payments. The purpose of the penalty provision is to insure that the injured party is promptly paid, *id*. at 639, and made whole. In comparison, the policy behind MCR 2.403(O) is to place the burden of litigation costs upon the party who insists upon trial by rejecting a proposed mediation award. Because each provision serves an independent policy and purpose, recovery of attorney fees under both provisions may be appropriate. *Id.* See also *Howard v Canteen Corp*, 192 Mich App 427, 440-441; 481 NW2d 718 (1992) (holding that attorney fee awards under both Civil Rights Act and mediation court rule were appropriate.)

Although the trial court, in considering the amount of attorney fees to be awarded under the no-fault act and the mediation rule, was not obliged to ignore the fact that overlapping awards were involved and could properly consider this fact when fashioning the two awards,[1] it abused its discretion in concluding that one dollar was a reasonable fee under the mediation rule. The award of one dollar is the equivalent of awarding no sanctions at all under the mediation rule, and contradicts the express language of the rule while undermining its purpose. The court rule does not except from its application cases in which an attorney fee is otherwise awarded to the prevailing party. Further, if a party facing liability for statutory (or contractual) attorney fees is exempt from mediation sanctions, the rule will have an unequal and unfair effect in such cases, placing one party at risk for mediation sanctions, but not the other, and will have an no "teeth" as to one party. The rule will not operate to place the burden of litigation costs on the party who insists upon trial.

We conclude the award of one dollar in mediation sanctions, even where an attorney fee has been otherwise awarded, is an abuse of discretion under MCR 2.403(O). We vacate the one dollar award and remand for reconsideration.

II

Plaintiff next argues that the trial court erred in reducing the number of hours for which plaintiff was awarded reasonable attorney fees by one hundred. We disagree.

The factors to be considered in assessing the reasonableness of attorney fees are:

> (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client. [*Jernigan v General Motors Corp*, 180 Mich App 575, 587; 447 NW2d 822 (1989), citing *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982).]

The record reveals that the trial court considered and addressed these factors. Because the court's decision is not grossly violative of fact and logic, we find no abuse of discretion. *MBPIA*, *supra*, 194 Mich App 234.

III

Lastly, plaintiff argues that the trial court erred in refusing to include no-fault interest in the award for purposes of computing interest on the judgment under MCL 600.6013; MSA 27A.6013. The trial court concluded that interest is calculated on the verdict plus costs and attorney fees, and that no-fault interest is not a cost or attorney fee, and should not be included.

A trial court's interpretation of the prejudgment interest statute is a question of law which we review de novo. *Haberkorn, supra* at 371. MCL 600.6013; MSA 27A.6013 provides in pertinent part:

> (1) Interest shall be allowed on a money judgment recovered in a civil action, as provided in this section. . . . .
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> * * *
>
> (6) Except as otherwise provided in subsection (5) and subject to subsection (11), for complaints filed on or after January 1, 1987, interest on a money judgment recovered in a civil action shall be calculated at 6-month intervals from the date of filing the complaint at a rate of interest that is equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1, as certified by the state treasurer, and compounded annually, pursuant to this section. *Interest under this subsection shall be calculated on the entire amount of the money judgment, including attorney fees and other costs.* However, the amount of interest attributable to that part of the money judgment from which attorney fees are paid shall be retained by the plaintiff, and not paid to the plaintiff's attorney. [Emphasis added.]

The allowance of interest under MCL 600.6013; MSA 27A.6013 is mandatory. *Treasury Dep't v CWCSA*, 186 Mich App 58, 61; 463 NW2d 120 (1990). MCL 600.6013; MSA 27A.6013 is a remedial statute to be construed liberally in favor of the plaintiff. *McKelvie v Auto Club Ins*, 203 Mich App 331, 339; 512 NW2d 74 (1994).

In *Wood, supra*, the Supreme Court affirmed the trial court's decision to award twelve percent no-fault interest on the overdue wage loss payment from the time it became overdue, pursuant to the no-fault act, MCL 500.3142; MSA 24.13142, and six percent interest on the entire judgment from the date the complaint was filed, pursuant to MCL 600.6013; MSA 27A.6013. The Supreme Court based its holding on the reasons cited by this Court in *Wood v DAIIE*, 99 Mich App 701; 299 NW2d 370 (1980), rev'd in part on other grounds *Wood v DAIIE*, 413 Mich 573 (1982). This Court had rejected the defendant's argument that "the overlapping of the interest provisions was impermissible," reasoning that each provision serves a different and independent purpose:

> The purpose of the six percent interest statute is to *compensate* the prevailing party for the expenses incurred in bringing an action and for the delay in receiving

> money damages. The 12 percent interest provision is intended to *penalize* the recalcitrant insurer rather than compensate the claimant. [*Id.* at 709. Citations omitted, emphasis in original; see also *Butler v DAIIE*, 121 Mich App 727, 732, 745; 329 NW2d 781 (1982).]

Defendant asserts that the amended version of MCL 600.6013; MSA 27A.6013 explicitly states that the award is to be calculated on "the entire amount of the money judgment, including attorney fees and other costs," but does not expressly refer to interest, thereby excluding interest by implication. We conclude, however, that the amended version of the statute is intended by the Legislature to serve the same purpose as its predecessor, and that the inclusion of an express reference to attorney fees and other costs was not intended to exclude interest awarded as part of the money judgment.

SJI2d 67.01, Form of Verdict: No-Fault First-Party Benefits Action, submits the issue of no-fault interest to the jury, and also includes a line entry on the verdict form in the final question, regarding the total amount of benefits to be awarded, for the jury to include twelve percent no-fault interest as an element of total benefits due if the jury finds that benefits were overdue. Plaintiff notes in this regard that the parties here submitted a hybrid verdict form in which the jury was asked if benefits were late and the first date on which they were late,[2] and that the subsequently entered judgment awarded interest in an amount to be later computed. We conclude that no-fault interest is included within the term "entire amount of the summary judgment." Applying *Wood* and *Butler, supra,* we vacate the trial court's calculation of prejudgment interest and remand this case for recalculation of prejudgment interest based on a sum inclusive of interest awarded under the no-fault act.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ John B. Bruff

[1] The court has considerable discretion in fashioning an appropriate no-fault attorney fee award. As the court recognized in this case, the court need not award a fee for every hour claimed by the attorney. Further, each hour of attorney time need not be compensated at the same rate. For example, in considering a reasonable attorney fee for time spent preparing for trial and in trial, the court can, consistent with the purpose of the statutory provision, appropriately consider that mediation sanctions will also be awarded for those hours.

[2] The jury verdict form is not before us.